



Billing Code 4410-CN-P

**DEPARTMENT OF JUSTICE**

**28 CFR Part 16**

**CPCLO Order No. 003-2012**

**Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** Elsewhere in the Federal Register, the Department of Justice (DOJ or Department) has published a notice of a new Department-wide Privacy Act system of records, Debt Collection Enforcement System, JUSTICE/DOJ-016. In this notice of proposed rulemaking, the DOJ proposes to exempt certain records in this system from certain provisions of the Privacy Act in order to avoid interference with the law enforcement functions and responsibilities of the DOJ. Public comment is invited.

**DATES:** Comments must be received by [insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** Address all comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1000, Washington, DC 20530, or facsimile (202) 307-0693. To ensure proper handling, please reference the CPCLO Order number in your correspondence. You may review an electronic version of the proposed rule at <http://www.regulations.gov>. You may also submit a comment via the Internet by e-mailing [DOJPrivacyActProposedRegulations@usdoj.gov](mailto:DOJPrivacyActProposedRegulations@usdoj.gov) or by using the comment form for this regulation at <http://www.regulation.gov>. Please include the CPCLO Order number in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern standard time on the day the comment period closes because <http://www.regulations.gov> terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern standard time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the Department's public docket. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment but do not want it to be posted online or made available in the public docket, you must include the term "PERSONALLY IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personally identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online or made available in the public docket, you must include the term "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information

to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Holley B. O'Brien, Director, Debt Collection Management Staff, Justice Management Division, Department of Justice, at (202) 514-5343.

**SUPPLEMENTARY INFORMATION:** In the Notice section of today's Federal Register, the DOJ published a new Department-wide Privacy Act system of records, Debt Collection Enforcement System, JUSTICE/DOJ-016, to reflect the consolidation of the Department's debt collection enforcement systems, that were previously maintained in various individual DOJ components, into a single, centralized system. This system of records is maintained by the Department of Justice to cover records used by the Department's components or offices, and/or contract private counsel retained by DOJ to perform legal, financial and administrative services associated with the collection of debts due the United States, including related negotiation, settlement, litigation, and enforcement efforts.

In this rulemaking, the DOJ proposes to exempt certain records in this Privacy Act system of records from certain provisions of the Privacy Act because the system contains material compiled for law enforcement purposes.

### **Regulatory Flexibility Act**

This proposed rule relates to individuals, as opposed to small business entities. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, the proposed rule will not have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that the DOJ consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to the Debt Collection Enforcement system would be created in any event by law enforcement entities and their sharing of this information electronically will not increase the paperwork burden on the public.

### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory-actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal

mandate causes those entities to spend, in aggregate, \$100 million or more in any one year the UMRA analysis is required. This proposed rule would not impose Federal mandates on any state, local, or tribal government or the private sector.

#### **List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, it is proposed to amend 28 CFR Part 16 as follows:

#### **PART 16--[AMENDED]**

1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

#### **Subpart E – Exemption of Records Systems Under the Privacy Act**

2. Section 16.134 is added to read as follows:

##### **§ 16.134 Exemption of Debt Collection Enforcement System, Justice/DOJ-016.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H) and (I), (5) and (8); (f) and (g) of the Privacy Act. In addition, the system is exempt pursuant to 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d)(1), (2), (3), and (4); (e)(1); (4)(G), (H), and (I); and (f). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system,

or the overall law enforcement process, the applicable exemption may be waived by the DOJ in its sole discretion.

(b) Exemptions from the particular subsections are justified for the following reasons:

- (1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because certain records in this system are exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal any investigative interest in the individual. Revealing this information may thus compromise ongoing law enforcement efforts. Revealing this information may also permit the record subject to take measures to impede the investigation, such as destroying evidence, intimidating potential witnesses or fleeing the area to avoid the investigation.
- (2) From subsection (c)(4) notification requirements because certain records in this system are exempt from the access and amendment provisions of subsection (d) as well as the access to accounting of disclosures provision of subsection (c)(3).
- (3) From subsections (d)(1), (2), (3), and (4) because access to the records contained in this system might compromise ongoing investigations, reveal confidential informants, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing debt collection investigations or other law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.
- (4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes.

(5) From subsection (e)(2) to avoid impeding law enforcement efforts associated with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(6) From subsection (e)(3) to avoid impeding law enforcement efforts in conjunction with debt collection by putting the subject of an investigation on notice of that fact, thereby permitting the subject to engage in conduct intended to frustrate or impede that investigation.

(7) From subsection (e)(4)(G), (H) and (I) because portions of this system are exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(8) From subsection (e)(5) because many of the records in this system are records contributed by other agencies and the restrictions imposed by (e)(5) would limit the utility of the system.

(9) From subsection (e)(8), because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DOJ and may alert the subjects of law enforcement investigations, who might be otherwise unaware, to the fact of those investigations.

(10) From subsections (f) and (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

January 31, 2012\_\_\_\_\_

Date

Nancy C. Libin  
Chief Privacy and Civil Liberties Officer  
United States Department of Justice

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